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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,155	10/20/2000	Sandrine Decoster	05725.0793-00000	7711
22852	7590	02/11/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/692,155

Applicant(s)

DECOSTER ET AL.

Examiner

Gina C. Yu

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See continuation sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-71,73,74,81-85,94 and 95.

Claim(s) withdrawn from consideration: 86-92.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Continuation from No. 2:

Amendments are not entered because the amendment does not place the application in allowable condition. While the insertion of the term "hair" more narrowly defines the intended use of the claimed *compositions* in the independent claims the enlisted products in the claims are viewed as intended future use of purposes of the composition. See MPEP § 2122.02. Thus no patentable weight will be given to the term.

Amendments are not entered also because the amendment for the *process* claims to treat hair only would require further consideration regarding the rejection made over Groh (US 5863943) in view of Dalle et al. (EP 0874017).

Continuation from No. 5:

Applicants' arguments regarding the obviousness rejection over Groh in view of Dalle is moot for the reasons above.

While applicants assert that a skilled artisan would not have been motivated to select only the synthetic oil from the Dubief composition, examiner respectfully points out that 1) the present claims are directed to compositions with open limitations, which may include components other than the recited elements; and 2) the current rejection is based on the notion that it would be obvious to have adopted the Dubief shampoo formulation to make use of the Dalle silicone emulsion, rather than picking only the synthetic oil from the Dubief formulation. In response to applicants' argument that Dalle fails to teach using the silicone copolymer emulsion with conjunction with synthetic oils, examiner respectfully disagrees. Dalle clearly indicates the use of oils in the final

Art Unit: 1617

composition comprising the invention, for example, in p. 5, lines 54-56, which teaches that the invention is "useful as a delivery system for oil and water soluble substances". The reference further teaches that the silicone emulsion can be mixed with conventional care ingredients such as moisturizing agents, for which the Dubief synthetic oils is used. See Dalle, p. 6, lines 1 – 4. In response to applicants' argument that the combined references are limited to shampoo compositions, examiner respectfully notes that Dalle/Dubief teach emulsion, which would still meet the present proposed amendment. See, for example, proposed claim 1, last line.

Regarding the rejection made over Iwao in view of Dalle, applicants argue that In re Kerkhoven does not apply in the present case and the rejection fails to provide motivation to combine the specific ingredients. While applicants specifically assert that the fact that the ingredients are conventional does not render the combination thereof obvious, examiner respectfully points out that the Iwao synthetic oils and Dalle silicone copolymers are not mere conventional ingredients, but specifically known for hair care ingredients. Moreover, these reference specifically teach the usefulness of their ingredients in hair conditioning compositions. Examiner maintains the position that the reference provide sufficient motivation for a skilled artisan to combine the teachings therein.

Applicants' argument that Restle does not provide motivation for a routineer to select the cationic amphiphilic lipids to combine with Iwao/Dalle is viewed unpersuasive. As indicated in the rejection, the combining the teachings here would have been


obvious because 1) the prior arts are all directed to emulsion hair care compositions; and 2) Iwao teaches using quaternary ammonium salts and nonionic surfactants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina Yu
Patent Examiner


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

2/7/04